

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

| | | |
|---------------------------------------|---|------------------------------------|
| ROGER W. WALLACH, individually, |) | |
| and on behalf of all others similarly |) | |
| situated, |) | |
| |) | |
| Plaintiff, |) | Case No. |
| |) | |
| v. |) | |
| |) | Circuit Court of St. Louis County, |
| DIRSEC, INC., |) | Missouri, Case No. 16SL-CC02405 |
| |) | |
| Defendant. |) | |

NOTICE OF REMOVAL

Defendant, DIRSEC, INCORPORATED, pursuant to 28 U.S.C. §§ 1331, 1441 and 1446, by and through its undersigned attorneys, and expressly reserving all rights, defenses and objections to this lawsuit, including those relating to jurisdiction and statutes of limitations, hereby gives notice of removal of the civil action captioned *ROGER W. WALLACH, individually and on behalf of all others similarly situated, v. DIRSEC, INC.*, Case No. 16SL-CC02405, from the Missouri Circuit Court for the Twenty-First Judicial Circuit (St. Louis County) (the “state court action”) to the United States District Court for the Eastern District of Missouri, Eastern Division. As grounds for removal, Defendant states as follows:

1. Plaintiff Roger Wallach commenced the state court action on June 29, 2016. Defendant was served with a copy of the Petition on July 8, 2016. A copy of the state court petition is attached hereto as Exhibit A.

2. Defendant has filed this Notice of Removal within 30 days of receipt, through service or otherwise, of a copy of the Plaintiff's original Petition, pursuant to 28 U.S.C. § 1446(b). Therefore, this Notice of Removal, filed on August 2, 2016, is timely.

3. This Court has federal question jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1441 because Count I of the Petition arises under federal law, namely, the Telephone Consumer Protection Act ("TCPA"), 47 U.S.C. § 227.

4. Count I of the Petition alleges that Defendant violated the TCPA by using an automatic telephone dialing system to make a phone call to Plaintiff's cell phone to solicit business. Petition, ¶¶ 23 - 34.

5. On the face of the Petition, it is thus clear that this case arises under federal law and is therefore removable pursuant to 28 U.S.C. §§ 1331 and 1441 because Plaintiff's Petition expressly asserts a claim and seeks remedies under the TCPA. *See Mims v. Arrow Financial Services, LLC*, 132 S. Ct. 740, 748 (2012) ("Because federal law creates the right of action and provides the rules of decisions, [a] TCPA claim, in 28 U.S.C. § 1331's words, plainly 'aris[es] under' the 'laws . . . of the United States.'").

6. Upon filing this Notice of Removal, Defendant will provide written notification to Plaintiff and will file an acknowledgement of removal attaching a copy of this Notice of Removal with the Clerk of the Circuit Court of St. Louis County, Missouri.

7. St. Louis County is within the Eastern District of Missouri.

8. This action is not an action described in 28 U.S.C. § 1445.

9. No admission of fact, law or liability is intended by this Notice, and all defenses, affirmative defenses and motions are hereby reserved.

10. Defendant files herewith as Exhibit B a copy of the entire state court file, and of all process, pleadings and orders received by Defendant in connection with the state court action.

WHEREFORE, Defendant DIRSEC, INCORPORATED removes the case entitled *Roger W. Wallach, individually and on behalf of all others similarly situated, v. DIRSEC, INC.*, Case No. 16SL-CC02405 from the Circuit Court for St. Louis County, Missouri to this Court.

DATED this 2nd day of August, 2016.

Respectfully submitted,

SHANDS, ELBERT,
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/s/ Jeremy D. Shook

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 2nd day of August, 2016, that a copy of the foregoing was mailed, postage prepaid, and e-mailed to:

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/s/ *Jeremy D. Shook*